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COMAR 10.07.01 Acute General and Special Hospitals.

.01 Definitions.

A. Text Unchanged.

B. Terms Defined.

(1)—(14) (text unchanged)

(14-1) “Freestanding Medical Facility” means a facility:

(a) In which medical and health services are provided;

(b) That, except for a freestanding medical facility established as a result of a conversion of a licensed general hospital under § 19-120(o)(3) of this title, is physically separated from a hospital or hospital grounds;

(c) That is an administrative part of a hospital or related institution; and

(d) That meet the requirements for provider-based status under the certification for an affiliated hospital as set forth by the Centers for Medicaid and Medicare Services in 42 CFR § 413.65.

(15)—(18) (text unchanged)

(18-1) “Lay Caregiver” means an adult individual designated by the patient or the patient’s legal guardian to assist with the patient’s care at home after discharge.

(19)—(37) (text unchanged)

.02—.20 (text unchanged)

.22—.28 (text unchanged)

.29 Notice to Patients of Outpatient on Observation Status.

A. A hospital shall provide both an oral and written notice to a patient of:

(1) The patient’s outpatient on observation status;

(2) The billing implications of the outpatient on observation status; and

(3) The impact of the outpatient on observation status on the patient's eligibility for Medicare rehabilitation services if:

(a) The patient received on-site services from the hospital for more than 23 consecutive hours;

(b) The on-site services received by the patient include a hospital bed and meals that have been provided in an area of the hospital other than the Emergency Department; and

(c) The patient is classified as an outpatient at the hospital for observation rather than as an admitted inpatient.

B. The written notice shall include:

(1) That the patient is considered to be on observation as an outpatient and is not admitted as an inpatient;

(2) The reason or rationale that the patient has not been admitted for inpatient services;

(3) That the patient, if needed upon discharge, may not qualify for Medicare Part A reimbursement for rehabilitation services, including such services provided under Medicare Part A in a skilled nursing facility;

(4) That there may be billing implications based on their outpatient status that may increase the patient's out-of-pocket costs for their stay;

(5) The name and title of the staff who provided the oral notice stating the date and time of the oral notice; and

(6) The signature of the patient to verify an understanding and receipt of the written notice.

C. Once the patient has received onsite services for more than 23 hours, the hospital shall provide written and oral notice to the patient that the physician has ordered services be provided as outpatient on observation status.

D. The oral and written notice shall be provided in a manner that is understood by the patient.

E. If the patient lacks capacity to understand the medical or financial implications of his or her outpatient on observation status, the oral and written notice shall be provided to a person authorized to make medical or financial decisions for the patient, including:

(1) A guardian of the person under Estates and Trusts Article, §13-705, Annotated Code of Maryland;

(2) A guardian of the property under Estates and Trusts Article, §13-201, Annotated Code of Maryland;

(3) An agent appointed under an advance directive that meets the requirements of Health-General Article, §5-602, Annotated Code of Maryland;

(4) A surrogate decision maker with authority under Health-General Article, §5-605, Annotated Code of Maryland;

(5) An agent appointed under a power of attorney that meets the requirements of Estates and Trusts Article, Title 17, Annotated Code of Maryland;

(6) A representative payee or other similar fiduciary; or

(7) Any other person, if that person was designated by the patient who was competent at the time of designation, and the patient or representative has provided the hospital with documentation of the designation.

F. For Medicare patients only, the hospital shall be considered compliant with this Regulation if the hospital has provided the notice as required by Medicare under 42 CFR §489.20(y).

.30—.35 (text unchanged)

.36 Designation of Lay Caregivers.

A. A hospital shall provide a patient or legal guardian of a patient with an opportunity to designate one lay caregiver before the discharge of the patient.

B. The hospital's discharge planning shall include the designation of the lay caregiver as soon as practicable in the discharge planning process to allow for post discharge training.

C. If a patient or legal guardian of a patient declines to designate a lay caregiver:
(1) The hospital shall document the decision in the patient's medical record; and
(2) The hospital shall be deemed to be in compliance with this Regulation.

D. If a patient or legal guardian of a patient designates a lay caregiver the hospital shall record in the patient's medical record:
(1) The designation of the lay caregiver;
(2) The relationship of the lay caregiver to the patient; and
(3) The name, telephone number and address of the lay caregiver.

E. Release of Medical Information.

(1) If the patient designates a lay caregiver the hospital shall request the patient or legal guardian to consent in writing to release medical information to the lay caregiver. The release of records shall be in accordance with:

- a. The hospital's procedures for releasing personal health information, and*
- b. All applicable federal and State laws.*

(2) Unless otherwise consented to by the patient or legal guardian of the patient, only the necessary records required for the lay caregiver to perform their duties shall be released to the lay caregiver.

(3) If a patient or legal guardian of a patient declines to consent to the release of medical information to the lay caregiver, the hospital shall not be required to

- a. Provide to the lay caregiver the notice required under Health-General § 19-382; or*
- b. Consult with the lay caregiver or provide to the lay caregiver information contained in the discharge plan issued under Health-General §19-383.*

F. A patient or a legal guardian of the patient may change the designation of a lay caregiver:

- (1) In the event the lay caregiver becomes incapacitated; or*
- (2) As desired, by the patient or legal guardian.*

G. Regardless of the desire of the patient or legal guardian of the patient, the designated lay caregiver shall not be obligated to perform any aftercare for the patient.

H. A patient or legal guardian shall not be required to designate a lay caregiver.

I. Hospital Obligations.

(1) If a patient or legal guardian of a patient designates a lay caregiver the hospital shall notify the lay caregiver of the discharge of the patient or the patient's transfer to another hospital, licensed health care facility or other residential facility as soon as practicable.

- (2) As soon as practicable prior to the discharge of a patient the hospital shall attempt to:*
- a. Consult with the patient's lay caregiver to prepare the lay caregiver for the patient's aftercare; and*
 - b. Issue a discharge plan that describes the aftercare needs of the patient.*

(3) The hospital shall make reasonable attempts to consult with the lay caregiver.

(4) The inability of the hospital to consult with lay caregiver shall not interfere with, delay or otherwise affect the medical care provided to the patient or the patient's planned discharge.

(5) The hospital shall document successful or unsuccessful attempts to contact the lay caregiver.

J. Discharge Planning Requirements. Regardless of the request for the designation of a lay caregiver, the hospital shall comply with all discharge planning requirements in:

- (1) This chapter at COMAR 10.07.01.27;*

- (2) *The standards imposed under the hospital's accreditation by a State approved accreditation organization; and*
- (3) *The Conditions of Participation for Hospitals 42 CFR 482.*

K. The designation of a lay caregiver shall not:

- (1) *Interfere with the rights of an agent to make health care decisions under Title 5 Subtitle 6 of this article; or*
- (2) *Create a private right of action against a hospital, a hospital employee, or a duly authorized agent of a hospital or otherwise supersede or replace existing rights or remedies under any other State or federal law.*

.37 Patient Rights.

- A. *A hospital shall develop a listing of the rights of the patients that is consistent with the requirements of The Joint Commission and 42 CFR 482.13 Medicare Condition of Participation for Hospitals Patient Rights.*
- B. *The hospital's patient rights shall at minimum address:*
 - (1) *patient privacy and confidentiality;*
 - (2) *informed decision making and informed consent;*
 - (3) *visitation;*
 - (4) *advanced directives;*
 - (5) *access to patient medical records;*
 - (6) *complaint and grievance process;*
 - (7) *freedom from physical or mental abuse, neglect, harassment, or corporal punishment; and*
 - (8) *Communication in a manner the patient can understand.*
- C. *The patient has the right to receive information about their rights and their care in a manner the patient can understand.*
- D. *Hospital staff who are responsible for patient care shall have knowledge of the hospital's patient rights and shall be able to assist patients and their families to:*
 - (1) *Access the services of the hospital's patient advocacy staff;*
 - (2) *File a complaint or grievance; or*
 - (3) *Obtain a written copy of the hospital's patient rights documents.*

.38 Maryland Health Care Decisions Act. A hospital shall comply with the requirements of the Maryland Health Care Decisions Act, Title 5 Subtitle 6 of the Health General Article, Annotated Code of Maryland.